

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)	
)	
Authorizing Permissive Use of)	GN Docket No. 16-142
the “Next Generation”)	
Broadcast Television Standard)	

**OPPOSITION OF HC2 BROADCASTING INC. TO
AMERICAN TELEVISION ALLIANCE PETITION FOR RECONSIDERATION**

HC2 Broadcasting Inc. (“HC2”) respectfully submits this Opposition to The American Television Alliance’s (“ATVA”) Petition for Reconsideration.¹

INTRODUCTION AND SUMMARY

HC2 Broadcasting Inc. (“HC2”) is new terrestrial distribution network that is comprised of full power, Class A, and a multitude of Low Power Television (“LPTV”) stations and

¹ 47 C.F.R. § 1.429; Petition for Reconsideration of the American Television Alliance, GN Docket No. 16-142 (filed Mar. 5, 2018) (“ATVA Petition”). The Petition addresses the Federal Communications Commission’s (“FCC” or “Commission”) order *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930 (2017) (hereafter, “*NextGen Broadcast TV Order*”). HC2 opposes ATVA’s request to prohibit LPTV stations from implementing a “flash cut” to ATSC 3.0 and instead require LPTV stations that cannot comply with simulcasting rules to obtain individual waivers. *See* ATVA Petition at 2. While HC2 does not support the balance of the ATVA Petition nor the NCTA’s petition, as they are equally unnecessary, HC2 assumes other commenters will address the issues HC2 does not address here. *See* ATVA Petition at 1-2 (requesting *inter alia* reconsideration of the FCC’s decisions not to require separate negotiations for first-time MVPD carriage of ATSC 3.0 signals and its decision to permit broadcasters to degrade their signals without warning viewers and MVPDs beforehand); Petition for Reconsideration of the NCTA – The Internet & Television Association, GN Docket No. 16-142 (filed Mar. 5, 2018) (requesting *inter alia* reconsideration of the FCC’s decision to sunset the “substantially similar” requirement, to not constrain broadcasters’ ability to use the retransmission consent process to gain carriage of ATSC 3.0 signals, and not to impose limits on the patent licensing process).

construction permits. The next-generation TV standard, ATSC 3.0, promises to allow television broadcasters to deliver advanced new communications services to the public in competition with new and emerging technologies from other industries.

ATVA's petition purports to solve a problem that does not exist and creates the much more serious problem of blocking or seriously impeding the voluntary adoption of a superior next-generation broadcast standard. Granting the petition would serve only to stifle innovation, reduce competition, and increase costs of deploying the ATSC 3.0 standard.

The Commission has recognized how ATSC 3.0 offers a wealth of new opportunities to serve the public and revitalize over-the-air television. The Commission's *NextGen Broadcast TV Order* struck the right balance of maintaining regulations that are necessary to protect the public interest while maximizing the incentives for a voluntary but expeditious roll out of—and eventual transition to—ATSC 3.0.²

ATVA asks the Commission to reconsider its reasoned decision to allow LPTV and translator stations to flash-cut to ATSC 3.0.³ Instead, ATVA proposes that the Commission require LPTV stations to comply with the simulcast requirements, and if they cannot, to obtain individual waivers.⁴ ATVA argues that exempting LPTV and translator stations from simulcasting coverage requirement would cause the same amount of harm as allowing full power stations to flash-cut by “disenfranchise[ing]” viewers” across the country.⁵ As the Commission recognized, however, imposing the simulcasting coverage requirement would only harm LPTV

² See generally *NextGen Broadcast TV Order*.

³ ATVA Petition at 2.

⁴ *Id.*

⁵ *Id.* at 5-6.

operators and offer the public few, if any, countervailing benefits.⁶ LPTV and TV translator stations face unique challenges in locating a simulcast partner because many are not located near another LPTV or translator station and may not be attractive simulcast partners for full power stations.⁷ The challenges associated with simulcasting would prevent many LPTV and TV translator stations from deploying ATSC 3.0 technology. Adopting ATVA's proposals would not only destroy incentives for LPTV and translator stations to adopt ATSC 3.0, but also create needless regulatory barriers to investment in the innovation that ATSC 3.0 promises.

HC2 controls hundreds of LPTV authorizations, several full power and Class A Stations, and is building a nationwide ATSC 3.0 network that will eventually add a broadcast-broadband extension to the Internet to address the explosive growth of over-the-top ("OTT") video services. HC2 seeks to:

- 1) Acquire broadcast properties and partners and channel sharing arrangements, including LPTV stations and licenses;
- 2) Deploy a nationwide network for high-quality IP multi-casting over existing LPTV spectrum;
- 3) Improve access for broadband video distribution to the public while also delivering a consistent and high-quality user experience;
- 4) Optimize costs for delivery of video and audio content, digital information and ultimately, Internet-of-Things ("IoT") and other yet-to-be-developed services; and
- 5) Implement an Internet-centric, enhanced, targeted, and personalized advertising business model including OTT technology.

⁶ See *NextGen Broadcast TV Order* ¶ 42 ("Although we recognize that permitting LPTV and TV translator stations to transition directly may cause some consumer disruption, in light of the unique circumstances faced by LPTV and TV translator stations we conclude that providing these stations with the option to transition directly will best ensure that they are able to deploy ATSC 3.0 technology.").

⁷ See *NextGen Broadcast TV Order* ¶¶ 41-42.

HC2 plans on using ATSC 3.0 to bring to market the kind of innovation that the *NextGen Broadcast TV Order* contemplated and sought to promote.⁸ Granting ATVA’s petition would delay that innovation and postpone deployment of advanced new services to the public.

DISCUSSION

I. ATVA’s Petition Presents No New Facts or Arguments and Fails to Demonstrate Any Errors or Omissions in the *Order*.

ATVA’s petition fails to meet the Commission’s basic standard of review.⁹ Petitions for reconsideration of final orders in rulemaking proceedings must rely on facts or arguments not previously presented to the Commission and will only be granted if: the facts or arguments (i) relied on relate to changed events or circumstances; (ii) were unknown to the petitioner until after his last opportunity to respond; or (iii) if the Commission decides consideration of the petition is in the public interest.¹⁰ A petition for reconsideration is also available upon a showing of a material error or omission in the original order.¹¹ But ATVA satisfies none of these criteria. ATVA claims its petition demonstrates “errors and omissions” in the original order, and raises “additional facts not known or not existing until after the petitioner’s last opportunity to respond.”¹² But the facts and arguments ATVA already presented to the Commission were not unknown, and ATVA provides no new facts or arguments in its petition.

⁸ See, e.g., *NextGen Broadcast TV Order* ¶ 1.

⁹ 47 C.F.R. § 1.429.

¹⁰ *Id.* § 1.429(b).

¹¹ *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, 32 FCC Rcd 3390 ¶ 16 (2017).

¹² ATVA Petition at 2.

II. Exempting LPTV and TV Translator Stations from the Simulcast Requirement is Essential to a Rapid Voluntary Deployment of ATSC 3.0 and was based on a Rational Distinction from Full Power Stations.

The Commission's *NextGen Broadcast TV Order* balanced several competing interests. The Commission sought to "facilitate private sector innovation and promote American leadership in the global broadcast industry," including deployment of improved TV services, enhanced public safety capabilities, and advanced accessibility options.¹³ The Commission also sought to give broadcasters "flexibility to deploy ATSC 3.0-based transmissions" and "minimize[e] the impact on, and costs to, consumers and other industry stakeholders."¹⁴ In light of these competing goals, the Commission rationally and reasonably chose to require full-power stations to simulcast ATSC 1.0 when offering ATSC 3.0, while permitting LPTV stations, which generally have a small fraction of the viewing audience of full power stations, to transition immediately to ATSC 3.0 standard without simulcasting existing signals.¹⁵ The Commission's tailored simulcasting ensures that the vast majority of the public who are served by ATSC 1.0 now and for the foreseeable future will continue to be served while still creating strong incentives for innovation and investment in next-generation broadcasting technologies, especially in the LPTV segment of the broadcast industry, which has historically experienced limited commercial success. As a practical matter, full power stations must continue to offer an ATSC 1.0 signal to maintain their advertising revenues. Since full power broadcast television stations must continue to transmit in ATSC 1.0 for business reasons anyway, the near-term regulatory cost of that requirement is effectively zero. Thus, the regulatory cost of this

¹³ See *NextGen Broadcast TV Order* ¶ 1.

¹⁴ See *id.* ¶ 2.

¹⁵ See *id.* ¶¶ 12-39.

requirement to full power broadcasters is minimal, especially given their significant financial resources.

The LPTV industry, by contrast, is resource constrained, as the Commission has recognized many times: both the revenues and viewership of LPTV operations represent a fraction of the revenues and viewership associated with full power stations. Therefore, simulcasting would impose much greater costs on LPTV operators than it would on full power television operators. Moreover, as the Commission recognized in the *NextGen Broadcast TV Order*, LPTV is already challenged by the digital transition and repacking.¹⁶ A significant number of LPTV stations would face serious financial challenges complying with a simulcasting requirement in addition to the existing regulatory burdens.

Another distinction between full power and LPTV broadcasters is that the cost of simulcasting is not as remote for LPTV operators as it may be for full power operators. Many LPTV stations will want to transition ATSC 3.0 at the earliest possible date to reduce costs and create new market opportunities. LPTV broadcasters are distinct from full power broadcasters in several ways that justify exempting LPTV stations from simulcasting, including: 1) the potential demand for 3.0 reverse “lighthouse” service for full power broadcasters;¹⁷ 2) the existing dearth of LPTV revenues to support successive transitions from analog to digital and then from ATSC 1.0 to 3.0;¹⁸ 3) the increased likelihood that an LPTV station will be a niche player that presents

¹⁶ *Id.* ¶ 44 (“[O]ur decision to exempt LPTV and TV translator stations from our local simulcasting requirement will ensure that analog LPTV and TV translator stations and stations that have been displaced due to the post-incentive auction repacking process are not forced to build both an ATSC 1.0 and an ATSC 3.0 facility.”).

¹⁷ *Id.* ¶ 43.

¹⁸ *See Id.* ¶ 44.

complementary business interests and much less of a competitive threat to the full power station; and 4) the ability for LPTV stations to experiment with innovative new services enabled by ATSC 3.0 to enhance the public interest with access to services that are struggling to keep up with consumer demand for on-demand personal video services.¹⁹

Because LPTV construction permit holders may want to or need to transition straight to ATSC 3.0, the cost of a simulcast rule is immediate and could frustrate the emergence of an ATSC 3.0 ecosystem, as the Commission's *NextGen Broadcast TV Order* implicitly acknowledged.²⁰ LPTV stations may offer full power stations a ready-made avenue to begin the transition to ATSC 3.0.²¹ If an LPTV station does not have an artificial regulatory simulcast obligation, the transition can begin almost immediately. The option was well stated in the *NextGen Broadcast TV Order*:

Exempting LPTV and TV translator stations from the local simulcasting requirement will have the added benefit of allowing these stations to serve as “lighthouse” stations, thereby providing an ATSC 3.0 host option for other full power, Class A, LPTV, and TV translator stations that wish to partner with them. LPTV stations could, therefore, serve an important role in market-wide simulcast arrangements by permitting other stations to experiment with 3.0 service while maintaining ATSC 1.0 service on their existing facility.²²

The *NextGen Broadcast TV Order* got it right. A reverse lighthouse could well be delayed for years if LPTV stations cannot do a flash cut. And a forward lighthouse in which the

¹⁹ *Id.* ¶ 43 (“LPTV stations that elect to transition directly and to serve as ATSC 3.0 host stations could thus play a significant role in facilitating the conversion to 3.0 technology. . . . [T]hese stations may also provide innovative 3.0 programming that could help drive consumer adoption of such equipment.”)

²⁰ See *supra* note 15.

²¹ See *NextGen Broadcast TV Order* ¶ 43.

²² See *id.*

full power moves its ATSC 1.0 signal to an LPTV station is all but impossible for practical regulatory reasons. Specifically, the *NextGen Broadcast TV Order* requires that if a full power station moves its ATSC 1.0 signal to another transmitter, it must provide substantially the same coverage.²³ Because most LPTV licensees have smaller footprints than most full power stations, most LPTV transmitters are unable to provide the same coverage as most full power stations. In practice then, ATVA's proposal to prevent LPTV stations from doing a flash cut would prevent one full power station from implementing ATSC 3.0 unless it partnered with another full power station and one station stopped transmitting 1.0 from its main transmitter. Operating one ATSC 1.0 full power station and one ATSC 3.0 full power station puts one station at a commercial disadvantage to the other and negotiating such an arrangement outside of commonly controlled stations seems unlikely to occur amidst a highly competitive local television markets. At the very least, full power license-pooling arrangements face far more commercial challenges than experimenting with ATSC 3.0 in collaboration with one of the thousands of local LPTV licensees operating in the United States. Exempting LPTV operators from the ATSC 1.0 simulcasting requirements advances the public interest in accelerating investment and innovation in broadcasting by providing full power stations with another option to deploy next-generation technologies more quickly than possible under a regime where all broadcasters must simulcast ATSC 1.0.

²³ See, e.g., *NextGen Broadcast TV Order* ¶ 31 (“Full power broadcasters implementing 3.0 service must continue to provide 1.0 service to the station’s existing community of license and comply with our community of license signal requirement.”).

ATVA claims that waiving the rule for LPTV operators would provide a sufficient remedy for the burden that its simulcasting requirement would impose.²⁴ ATVA is incorrect. Many LPTV licensees would save considerable time and money by transitioning directly to ATSC 3.0. And any ostensible viewer disruption by the accelerated deployment of ATSC 3.0 on the LPTV platform would be extraordinarily limited because of the low audience share the vast majority of LPTV operators have historically commanded. As a result, the ATVA proposal would not only impose unnecessary costs and regulatory burdens on LPTV licensees, but also requires the Commission to process hundreds, even thousands, of LPTV waiver applications before these stations can deploy ATSC 3.0. Adding needless and difficult regulatory barriers—not to mention uncertainty—would discourage deployment and provide few, if any, lasting benefits to viewers.²⁵

LPTV licensees are uniquely positioned to support the full power TV broadcasters' initial transition to ATSC 3.0. By collaborating with full power broadcasters who must retain their existing ATSC 1.0 signal coverage as a simulcast, LPTV broadcasters can solve a challenging problem for the initial deployment of next-generation broadcasting services.

III. The Purported Benefits of a Simulcasting Mandate Pale In Comparison to the Benefits of Giving Additional Regulatory Flexibility to LPTV Services.

ATVA's assertion that allowing LPTV stations to flash cut would deprive MVPDs of major networks is incorrect. While ATVA says a "large and increasing number" of LPTV

²⁴ See ATVA Petition at 6-7.

²⁵ Regulatory uncertainty is often the biggest barrier to investment. To an investor, an exemption codified in a rule offers regulatory certainty. In contrast, the option to seek waiver of a new rule that may be ill-defined and has no precedent creates extreme regulatory uncertainty. How hard will it be to get a waiver? What standards will apply? How long will it take? How much will it cost? ATVA does not say.

stations maintain major network affiliations, LPTV operators do not receive must-carry rights.²⁶ Any LPTV or translator station carrying the signals of a major network operator has had to negotiate MVPD carriage by contract, not by regulatory fiat. Thus, any LPTV that has carriage rights with a major network would have to negotiate with an ATVA member before transitioning to ATSC 3.0 if it wanted to ensure continued carriage.

The very few LPTV stations that carry a major network are likely to have a large number of viewers and significantly more advertising revenues than the average LPTV station. They would also have greater costs. Accordingly, for this rare breed of LPTV stations, the constraints of the free market would make the likelihood of abandoning a significant number of viewers—whether OTA or carried by an MVPD—almost infinitesimally small. Out of necessity, these few LPTV stations would simulcast voluntarily if and when they transition to 3.0. And unlike full power stations they would have realistic options to simulcast either with a full power or with another LPTV station, since their respective coverage areas may be similar.

CONCLUSION

The Commission's *NextGen Broadcast TV Order* sought to limit regulatory burdens on television operators to encourage the voluntary, market-driven deployment of ATSC 3.0. Reversing course and adopting the procedurally improper ATVA Petition would upend this goal and frustrate the deployment of new technology in the market. The Commission properly considered ATVA's assertions in its *Order* and rejected them based on a well-developed record and sound and compelling public policy. ATVA has neither identified an error or omission in the *NextGen Broadcast TV Order*, nor has it shown any changed events or circumstances have

²⁶ ATVA Petition at 5-6.

occurred since ATVA's last opportunity to present such matters to the Commission. ATVA's arguments and its flawed attempt to revisit them warrant no further consideration.

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